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QUIA TIMET AND THE PREVENTION OF THREATENED TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT BY DOMESTIC AUTHORITIES

An analytical inquiry into a putative domestic remedy and its structural foreclosure

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Institute for the Advancement of Justice & Human Rights

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Abstract

This Advisory Opinion examines whether the equitable doctrine of quia timet — long recognized in United States courts as a mechanism for anticipatory relief against threatened future injury — affords an effective domestic remedy for persons facing the imminent infliction of torture or cruel, inhuman or degrading treatment by domestic authorities of the United States. The IAJ concludes that quia timet, properly understood, presents a theoretically available and doctrinally coherent preventive-equity pathway whose extension from its historical applications in suretyship, property, trust, and analogous contexts to the protection of bodily and mental integrity is supported by the doctrine's preventive logic, by the peremptory character of the underlying norm, and by the United States' obligations under the Convention against Torture and cognate instruments.

The IAJ further concludes, however, that this theoretical availability is structurally foreclosed in practice by an accumulated body of abstention, immunity, jurisdictional, standing, and pleading doctrines that operate cumulatively to defeat invocation of the pathway against the actors most likely to threaten torture or CIDT in the contemporary United States. The result is that a doctrinally available domestic remedy does not, in practice, constitute an effective remedy within the meaning of UNCAT Article 13 and ICCPR Article 2(3). The IAJ submits this finding for consideration by competent United Nations treaty bodies, Special Procedures, and the broader human-rights community, and for the use of courts, counsel, complainants, and scholars who may engage with the analysis.

Part I. The Question Before the IAJ

1.01 The question

The question this Advisory Opinion addresses is whether the equitable doctrine of quia timet — "because he fears" — is available in United States courts as a mechanism by which a person facing imminent infliction of torture or cruel, inhuman or degrading treatment by a domestic authority may obtain anticipatory relief sufficient to prevent the threatened conduct. The question has two analytically distinct components. The first is doctrinal: does the equitable doctrine of quia timet, properly understood and properly extended, supply a coherent legal basis for anticipatory relief in the human-rights context? The second is practical: even if it does, would such relief in fact be available in United States courts against the categories of actors most likely to threaten torture or CIDT?

1.02 Why the IAJ examines it

The IAJ's institutional purpose includes the identification of domestic and international pathways for the prevention, accountability, remedy, and reform of human-rights violations. The Committee against Torture has emphasized, in General Comment No. 2 and elsewhere, the preventive character of UNCAT Article 2(1)'s obligation to take "effective legislative, administrative, judicial or other measures to prevent acts of torture." The IAJ's institutional position is that, where a person faces a documented and imminent risk of infliction, an effective preventive framework must include access to a domestic mechanism capable of acting before the harm occurs. Where such mechanisms exist in functional form, they ought to be identified, documented, and made known. Where they exist in formal but not functional form — that is, where a doctrine is theoretically available but structurally foreclosed — that condition is itself information of consequence to the international assessment of the United States' treaty compliance.

1.03 What this Opinion does and does not do

This Opinion advances an analytical argument. It does not promulgate a rule. It does not predict success in any particular litigation. It does not represent that any reader can, by following its analysis, obtain relief from any court. It identifies a doctrine, examines its possible extension to a domain in which it has been seldom invoked, sets out the procedural vehicles through which the extension would be pursued, documents in candid form the obstacles such pursuit would encounter, and draws conclusions consistent with the institutional purpose of the IAJ as articulated in its General Comment.

The General Comment governs the institutional weight of this Opinion. The reader is referred to that document for the IAJ's full statement of what its advisory opinions are, what they are not, and what they may be used for.

1.04 The Opinion's contribution and the equivalence-promise question

The procedural vehicle and the institutional contribution. The Opinion's contribution is institutional rather than litigational. A petitioner today seeking anticipatory relief against threatened torture or CIDT by a domestic authority would file a motion for a preliminary injunction or temporary restraining order under Federal Rule of Civil Procedure 65 and the four-factor test in Winter v. Natural Resources Defense Council, 555 U.S. 7 (2008). That procedural vehicle is identified in Section 5.01 and discussed in Section 2.05. The Opinion is not a litigation toolkit, and a Rule 65 motion would not require any of the analytical work the Opinion contains in order to be filed. What the Opinion supplies that a Rule 65 motion does not is the institutional documentary record: the historical equity foundation that makes the doctrinal-extension argument coherent under Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc., 527 U.S. 308 (1999); the interpretive linkage to the United States' international obligations under the Charming Betsy canon; the systematic catalog of doctrinal obstacles that determine the pathway's operational availability; and the conclusion, derived from those materials, on whether the United States provides an effective preventive remedy as the treaty framework requires. The Opinion is addressed to the readers for whom that documentary record is institutionally consequential: counsel and complainants evaluating the realistic prospects of domestic anticipatory relief; treaty bodies and Special Procedures of the United Nations evaluating United States compliance with the preventive obligation in UNCAT Article 2(1) and the effective-remedy obligation in UNCAT Article 13 and ICCPR Article 2(3); scholars, civil-society organizations, and the broader human-rights community engaging with the operational state of preventive equity in the United States.

The reconstructive method. The Opinion's analytical method is reconstructive. It does not begin with the contemporary procedural vehicle and look backward for justification. It begins with the historical equitable doctrine, traces its reception into United States equity at and following the Judiciary Act of 1789, documents its modern survival in the federal record collected in Appendix B, examines the procedural vehicles through which it would be invoked in contemporary practice, and then walks through, doctrine by doctrine, the structural obstacles that determine whether the pathway is operationally available. The reconstructive method matters because it allows the Opinion to address a particular treaty-compliance question with institutional rigor: whether the United States' domestic legal architecture provides a preventive remedy against threatened torture and CIDT that is effective in the operational sense the treaty framework requires. The question is not whether such a remedy exists in formal doctrine. The question is whether, when the doctrine is traced from its historical foundations

through its modern survival and against the full structure of contemporary procedural and substantive limits, an affected person facing a documented and imminent risk of infliction can in practice obtain timely protective relief from a United States court.

The operational equivalence. The Opinion's reconstruction bears directly on the equivalence promise that accompanied the United States' ratification of UNCAT. The reservations, understandings, and declarations transmitted on ratification have been understood, including by the IAJ, as reflecting the position that the domestic constitutional protections of the Fifth, Eighth, and Fourteenth Amendments provide protection equivalent to the Convention's prohibition. The Opinion does not engage the substantive content of that promise; the IAJ's separate institutional analysis at UNCAT and Jus Cogens: A Contemporary Perspective (IAJ-STD-20260505-001-PUB) addresses the substantive norm. What the Opinion addresses is the operational dimension of the equivalence promise: whether the domestic legal architecture, in addition to providing substantive prohibitions, provides operational mechanisms by which a person facing threatened infliction can obtain timely protection. The reconstructive analysis that follows establishes the IAJ's institutional position. A meaningful operational equivalence — a domestic mechanism that delivers timely protective relief against threatened torture or CIDT by domestic authorities in the cases the framework would reach — is, on the present record, absent in any form that satisfies the preventive obligation. Where formal doctrinal availability is identified, it is extremely difficult to qualify for and very easily defeated in operation. The structural-foreclosure analysis in Part VI documents the obstacle structure that produces this result. The Opinion's conclusion is not that no relief is ever possible; Part VII identifies the narrow case profiles in which relief may be attainable. The Opinion's conclusion is that the operational equivalence promised at ratification, when traced from the historical foundations of American equity practice through the contemporary procedural architecture, is not present in the form the treaty framework requires.

Part II. Quia Timet: Origin, Reception, and Modern Survival

2.01 The doctrine

Quia timet is a doctrine of equity. Its name — Latin for "because he fears" — captures the conceptual essence of the relief it affords: a court of equity may grant relief against a threatened future injury before that injury has occurred, where waiting until consummation would render the legal remedy inadequate. The doctrine is among the oldest in the equity tradition. It traces from the practice of the English Court of Chancery, where bills quia timet were entertained against threatened wrongs that, by their nature, would not be susceptible of adequate redress after the fact.

2.02 Reception in United States equity

United States equity jurisprudence received quia timet as part of the inherited equity tradition. Following the merger of law and equity under the Federal Rules of Civil Procedure, and analogous merger in most state jurisdictions, the doctrine is no longer pursued through a separately denominated "bill quia timet." It survives, instead, as a preventive-equity principle reflected in contemporary remedies such as the preliminary or permanent injunction, the declaratory judgment, specific performance, exoneration, collateral security, and related preventive remedies. The doctrine has not disappeared; it has been absorbed into the procedural architecture of modern equity practice. Its use remains subject to modern jurisdictional, statutory, procedural, and equitable limits.

2.03 Modern applications

Modern reported federal cases most visibly preserve quia timet in suretyship, collateral-security, indemnity, and exoneration disputes. Older equity authorities and related preventive-injunction doctrines also reflect broader quia timet logic in property, title, nuisance, trust, and analogous contexts. The principal modern applications include the following.

- The most prominent is surety exoneration, in which a surety anticipating a call to pay seeks an order requiring the principal to discharge or collateralize the obligation before payment falls due. See, e.g., Morley Constr. Co. v. Md. Cas. Co., 90 F.2d 976 (8th Cir. 1937); Borey v. Nat'l Union Fire Ins. Co., 934 F.2d 30 (2d Cir. 1991); Fid. & Deposit Co. of Md. v. Edward E. Gillen Co., 926 F.3d 318 (7th Cir. 2019).
- A second is quiet-title and removal-of-cloud practice, in which a possessor seeks to extinguish an unfounded but threatening claim against real property.
- A third is in trust law, where a beneficiary anticipating a breach of trust by a trustee seeks anticipatory relief.
- A fourth is anticipatory nuisance, where a defendant's planned conduct will cause substantial and near-certain injury to neighboring property or persons. The catalogue is not exhaustive.

The modern authorities therefore establish the survival of the preventive-equity principle most clearly in financial and property-related settings, while supporting — but not themselves deciding — its proposed extension to threatened human-rights harms.

2.04 The doctrinal elements

Across its modern applications, quia timet consistently requires four elements. First, the petitioner must hold a substantive right that is being threatened. Second, the threatened injury must be real and

imminent — not speculative, remote, or dependent on intervening events that may not occur. Third, the threatened injury must be irreparable in the equitable sense, or the legal remedy available after consummation must be inadequate. Fourth, the equitable considerations — balance of hardships, public interest, clean hands — must favor anticipatory intervention. These elements have proved stable across centuries of application and across changes in the procedural vehicles through which the doctrine is invoked.

2.05 Quia timet and the modern injunction

Federal courts continue to recognize quia timet as an established equitable doctrine. The Second Circuit's articulation in Borey v. Nat'l Union Fire Ins. Co., 934 F.2d 30 (2d Cir. 1991), has been widely cited as the modern federal statement of the doctrine and its elements, and is followed across the federal circuits in the surety context. See, e.g., Fid. & Deposit Co. of Md. v. Edward E. Gillen Co., 926 F.3d 318 (7th Cir. 2019); U.S. Fid. & Guar. Co. v. Arch Ins. Co., 578 F.3d 45 (1st Cir. 2009); In re Farmland Indus., Inc., 296 B.R. 793 (B.A.P. 8th Cir. 2003). The Supreme Court recognized the doctrine in similar terms in City of New Orleans v. Whitney, 138 U.S. 595 (1891). The four-factor preliminary-injunction test articulated by the Supreme Court in Winter v. Nat. Res. Def. Council, 555 U.S. 7 (2008) — likelihood of success on the merits, irreparable harm, balance of equities, and public interest — substantially absorbs the quia timet showing. A petition for anticipatory relief against threatened torture or CIDT need not denominate itself a bill quia timet to invoke the doctrine; it suffices that the petition seeks to prevent future injury and pleads the elements set out above. The Winter test is the contemporary form in which quia timet is litigated.

Because the merger has substantially absorbed quia timet into modern injunction practice, a reader may reasonably ask why this Opinion is framed around quia timet rather than under the generic heading of preventive injunctions or the Winter test. The IAJ identifies three reasons for the framing choice, each substantive. First, the doctrinal-extension argument advanced in Part IV must clear the limit on federal equitable power articulated in Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc., 527 U.S. 308 (1999), which confines federal equity to remedies traditionally accorded by courts of equity at the time of the Judiciary Act of 1789. That limit is met by identifying quia timet — a specific equitable doctrine documented in English Chancery practice and received into federal equity at and before 1789 — as the doctrine being extended. The generic "preventive injunctions" category, as it has developed in twentieth-century federal practice, carries the very accretion of modern doctrine that Grupo Mexicano was specifically designed to constrain; it cannot anchor the response to Grupo Mexicano as cleanly. Second, the subject-matter-neutrality argument in Part IV.02 turns on the historical record of preventive equity across property, title, trust, surety, and the analogous contexts collected in Appendix B. That record speaks in the vocabulary of the historical doctrine. The modern injunction categories — § 1983

for constitutional violations, ADA for disability discrimination, environmental and statutory injunction practice — each carry subject-matter expectations the historical doctrine did not. Third, the interpretive role of the international framework under the Charming Betsy canon, addressed in Section 3.04 and Part IV.04, operates on identifiable domestic doctrines rather than on generalized procedural frameworks; quia timet is such a doctrine, and the canon's operation on it is doctrinally cleaner than its operation on Rule 65 procedure or the Winter test alone. The framing choice is therefore not ornamental. It supplies the doctrinal handles on which the Part IV argument depends. A petitioner litigating in federal court today would invoke quia timet as the historical substantive doctrine and Rule 65 with the Winter test as the procedural vehicle; the two are not alternatives but complementary aspects of a single contemporary preventive-equity claim.

Part III. The Substantive Norm and Its Preventive Obligation

3.01 The absolute prohibition

The prohibition on torture and on cruel, inhuman or degrading treatment or punishment is absolute and non-derogable. Article 2(2) of the Convention against Torture provides that no exceptional circumstances whatsoever — including war, threat of war, internal political instability, or any other public emergency — may be invoked as justification for torture. Article 4(2) of the International Covenant on Civil and Political Rights confirms the non-derogable character of Article 7. The Committee against Torture has stated, in General Comment No. 2, that the prohibition is jus cogens. The customary international law prohibition operates independent of treaty ratification status.

3.02 The preventive obligation

UNCAT Article 2(1) imposes a positive obligation on each State Party to take effective legislative, administrative, judicial, or other measures to prevent acts of torture. Article 16 extends the preventive obligation to acts of CIDT. The Committee against Torture has repeatedly emphasized the preventive character of Article 2(1) and the need for effective measures capable of preventing torture and CIDT before infliction. The IAJ's institutional position is that, where a person faces a documented and imminent risk of infliction, a preventive treaty framework requires access to a domestic mechanism capable of acting before the harm occurs. The obligation is not satisfied by post-hoc damages, criminal prosecution after the fact, or remedies that depend for their operation on the harm having already occurred.

The IAJ maintains a separate published institutional analysis of the substantive UNCAT and jus cogens norm against torture and CIDT — UNCAT and Jus Cogens: A Contemporary Perspective (IAJ-STD-20260505-001-PUB) — which sets out the IAJ's position on the textual scope of UNCAT Article 1, the CAT Committee's progressive interpretive practice, the operation of jus cogens above the original-scope analysis, the application of UNCAT to judicial conduct against captive litigants, and the relationship between the international plane and domestic enforcement constraints. The present Advisory Opinion examines a putative domestic equitable pathway — quia timet — for anticipatory relief against threatened torture or CIDT. It does not restate the substantive analysis of the international norm; readers seeking the IAJ's institutional position on that question should consult the perspective document.

3.03 The right to an effective remedy

UNCAT Article 13 guarantees the right of any individual who alleges torture to complain to and have his case promptly and impartially examined by competent authorities, with protection against retaliation, intimidation or ill-treatment. Although Article 13 is framed around complaint and examination, IAJ's position is that a remedy is not effective in a preventive treaty system if it becomes available only after avoidable infliction has occurred. ICCPR Article 2(3) guarantees an effective remedy for any violation of Covenant rights. Effectiveness, in the jurisprudence of the Committee against Torture and the Human Rights Committee, requires that the remedy be capable of preventing the violation where prevention remains possible, not merely of compensating for it after the fact.

3.04 The interpretive role of the international framework

The United States Senate, in giving advice and consent to ratification of UNCAT and the ICCPR, declared each non-self-executing. The Supreme Court held in Medellín v. Texas, 552 U.S. 491 (2008), that non-self-executing treaty provisions do not, of themselves, create private rights of action in United States courts. The international framework's role in domestic litigation is therefore not as the load-bearing cause of action. Its proper roles are three. First, it operates as interpretive authority under the Charming Betsy canon (Murray v. Schooner Charming Betsy, 6 U.S. (2 Cranch) 64 (1804)), requiring that acts of Congress be construed in conformity with the law of nations where possible. Second, it informs the substantive content of domestic constitutional provisions; the Supreme Court has cited international norms in defining "evolving standards of decency" under the Eighth Amendment in Roper v. Simmons, 543 U.S. 551 (2005), and Atkins v. Virginia, 536 U.S. 304 (2002). Third, the jus cogens prohibition on torture operates as customary international law, applied by federal courts under The Paquete Habana, 175 U.S. 677 (1900), and the Filartiga v. Pena-Irala, 630 F.2d 876 (2d Cir. 1980), line, though post-Sosa v. Alvarez-Machain, 542 U.S. 692 (2004), the scope of customary-international-law claims against domestic actors is contested.

This interpretive role is limited. It cannot override clear statutory text, create a private cause of action where domestic law does not supply one, or nullify the Senate's non-self-execution declarations. Its relevance is strongest where the court is already construing ambiguous domestic law, equitable discretion, procedural standards, or the public-interest and irreparable-harm components of preventive relief.

3.05 Structural inadequacy of existing United States arrangements

The United States does not maintain a GANHRI-accredited national human rights institution, a designated National Preventive Mechanism under the Optional Protocol to UNCAT, or any other dedicated preventive infrastructure for torture and CIDT directed at domestic authorities. The Committee against Torture, the Human Rights Committee, the Committee on the Elimination of Racial

Discrimination, and the Universal Periodic Review have on multiple occasions recommended establishment of such mechanisms. The recommendations have not resulted in establishment. The IAJ's institutional position on this absence is set forth in the General Comment incorporated by reference. The relevance of the absence for present purposes is that, in the absence of dedicated preventive infrastructure, existing domestic legal instruments are the only mechanisms presently available to attempt the preventive work that UNCAT Article 2(1) requires. Quia timet is among the few such instruments doctrinally capable of doing it.

Part IV. The Doctrinal Argument for Extension

4.01 The argument stated

The argument is that the equitable doctrine of quia timet, properly understood, encompasses the prevention of threatened torture and CIDT by domestic authorities. The argument has three steps. The IAJ states at the outset what the federal record does and does not contain. No reported decision of a United States court has applied quia timet, or its modern injunction-doctrine equivalents, to threatened torture or CIDT by domestic authorities. The federal authorities collected in Appendix B that recognize or apply the doctrine arise in suretyship, collateral-security, exoneration, and analogous commercial-equity contexts. The argument that follows is therefore one of doctrinal extension, not doctrinal application. It rests on the proposition that quia timet's preventive logic is subject-matter-neutral and capable of reaching the protected interest at issue here; it does not rest on any prior case so holding.

4.02 First step: quia timet's preventive logic is not inherently limited to financial or property interests

The historical record of preventive equity does not support the proposition that quia timet is limited to property, contract, or trust interests. Anticipatory nuisance — a long-recognized application of preventive equity — protects the bodily integrity of those exposed to the planned conduct, not merely the value of adjacent land. Anticipatory injunctions against threatened publications have, in narrow circumstances, protected reputational interests. The doctrine of injunctive relief against threatened constitutional violations, developed in the federal courts in the late nineteenth and early twentieth centuries and codified in modern civil-rights practice, protects rights of personal liberty and bodily integrity. The line of cases sustaining anticipatory relief against threatened deprivations of constitutional rights is not a departure from quia timet but a particular application of it.

The limiting principle of the doctrine has never been a subject-matter restriction. The limiting principle has been the four elements set out in Part 2.04 — substantive right, real and imminent threat, irreparability or inadequacy of legal remedy, and favorable equitable considerations. Where those elements are present, the doctrine's preventive logic is satisfied irrespective of whether the protected interest is property, contract, trust, reputation, liberty, or bodily and mental integrity, subject always to jurisdiction, the domestic source of the right, immunity, and the availability of an authorized remedial vehicle.

4.03 Second step: the peremptory character of the underlying norm reinforces the doctrine's logic

The norm prohibiting torture and CIDT is peremptory and non-derogable. Its character would be substantially undermined if it were enforceable only by damages assessed after the prohibited infliction. The Committee against Torture's repeated insistence on the preventive obligation under Article 2(1) is, in this respect, an articulation of what the norm's character entails. In any individual proceeding, however, the petitioner must still establish, on the case-specific record, the imminence of the threatened harm, the severity of the threatened conduct, the petitioner's prior notice to relevant officials, and the inadequacy of post-hoc remedies. A legal system that recognizes the prohibition as absolute but provides no anticipatory remedy against threatened violations of it does not, in any operational sense, treat the prohibition as absolute. The doctrinal extension of quia timet to threatened torture and CIDT is therefore not an expansion of equity into a new domain; it is the application of equity's preventive logic to a substantive norm whose own character demands such application.

4.04 Third step: the United States' international obligations supply interpretive support

The Charming Betsy canon requires construction of domestic procedural and substantive rules in conformity with international obligations where possible. Equity rules, including the contours of quia timet and the Winter test, are constructions susceptible of such conforming interpretation. The United States' obligations under UNCAT Article 2(1), ICCPR Article 7 read with Article 2(3), and customary international law support construction of domestic preventive-equity doctrine to include threatened torture and CIDT within its operational scope. This is interpretive, not creative. It does not require courts to recognize a private right of action under non-self-executing treaty provisions. It requires only that they read existing domestic doctrine in light of the international framework where the doctrine permits such reading — and the doctrine of quia timet, with its subject-matter neutrality and preventive logic, permits it.

4.05 The proposed framework, summarized

A petition for anticipatory relief against threatened torture or CIDT, brought under quia timet through the procedural vehicle of Rule 65 or its state-court analogue, would require the petitioner to plead and show:

- A domestic constitutional, statutory, custody, disability, procedural, evidentiary, or equitable right capable of supporting prospective relief in the forum invoked.

- A specific impending act attributable to a domestic authority, sufficiently particularized as to actor, mechanism, and temporal proximity;
- Severity meeting the threshold of CIDT or torture under UNCAT Articles 1 and 16, as elaborated by the Committee against Torture and supported by documentation prepared in accordance with the Istanbul Protocol;
- Inadequacy of available alternative remedies on the case-specific record, established by reference to actual attempts to invoke them and their actual outcomes;
- Irreparability shown by the nature of the threatened harm, the inability of post-hoc remedies to restore the status quo ante, and the peremptory character of the prohibition as interpretive support;
- Balance of equities and public interest favoring anticipatory relief, in light of the absolute character of the prohibition and the absence of countervailing legitimate interest in the threatened conduct;
- Contemporaneous documentation consistent with the international medico-legal standard.

These criteria are conjunctive: each must be satisfied. They are presented here as the framework an extended doctrine would require, not as a checklist whose satisfaction guarantees relief. Whether relief would in fact be granted on satisfaction of the framework is the question addressed in Part VI.

Part V. Procedural Vehicles in United States Courts

A petition for anticipatory relief under the framework set out in Part IV would be brought through one or more of the following procedural vehicles. The choice of vehicle depends on the identity of the threatening actor, the nature of the impending act, the petitioner's posture, and the available jurisdiction.

5.01 Preliminary injunction and temporary restraining order

Federal Rule of Civil Procedure 65, and analogous state rules, supply the principal procedural vehicle. The petitioner seeks an order temporarily restraining or preliminarily enjoining the specific impending act. The Winter test governs. The quia timet showing maps onto the four Winter factors as set out in Part 2.05.

5.02 Prospective relief against state and federal officials

Where the threatening actor is a state or local official, 42 U.S.C. § 1983 and Ex parte Young, 209 U.S. 123 (1908), may permit prospective relief against an official-capacity defendant for ongoing or threatened violations of federal law. The 1996 amendment to 42 U.S.C. § 1983 effected by the Federal Courts Improvement Act provides that injunctive relief shall not be granted against a judicial officer for an act or omission taken in such officer's judicial capacity unless a declaratory decree was violated or declaratory relief was unavailable. This constraint is a principal obstacle in any case where the threatening actor is judicial. Where the actor is federal, Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971), is generally not the vehicle for injunctive relief, and has been further narrowed by Ziglar v. Abbasi, 137 S. Ct. 1843 (2017), and Egbert v. Boule, 596 U.S. 482 (2022). Potential pathways against federal officials may include nonstatutory officer suits, APA review under 5 U.S.C. § 702 where applicable, habeas, statutory review, or other specific remedial schemes. The availability of relief against federal officials is context-specific and must be analyzed separately from Bivens damages doctrine.

5.03 Declaratory judgment

The Declaratory Judgment Act, 28 U.S.C. § 2201, permits a court of competent jurisdiction to declare the rights and other legal relations of any interested party seeking such declaration. Declaratory relief may be sought independently or as a precursor to coercive relief, and importantly is not barred by the 1996 § 1983 amendment in the same terms as injunctive relief. A declaration may, in limited circumstances, clarify legal relations and provide a predicate for later relief if disregarded. But declaratory relief is not an automatic route around judicial immunity, abstention, Rooker-Feldman, preclusion, or the 1996

amendment to § 1983, and courts may reject declaratory claims that function as appellate review or interference with ongoing proceedings.

5.04 All Writs Act

The All Writs Act, 28 U.S.C. § 1651, authorizes federal courts to issue writs necessary or appropriate in aid of their existing jurisdiction and agreeable to the usages and principles of law. It does not create jurisdiction, does not supply an independent cause of action, and cannot be used to evade statutory or jurisdictional limits. In a quia timet setting, it may support ancillary or protective orders only where the court already has jurisdiction and the writ is necessary to preserve that jurisdiction or the effectiveness of relief otherwise within the court's power.

5.05 Habeas corpus

In contexts of present or impending custody — criminal detention, civil commitment, immigration detention, and certain court-ordered restraints — habeas corpus under 28 U.S.C. §§ 2241, 2254, or 2255 may perform a preventive function where the petitioner challenges the fact, duration, or legally significant conditions of custody and where the requested relief falls within the scope of habeas in the relevant jurisdiction. Conditions-of-confinement claims are especially vehicle-sensitive; in some jurisdictions they must proceed under § 1983 or an analogous civil-rights vehicle rather than habeas. The availability of habeas relief therefore must be assessed by jurisdiction, custody status, and requested remedy.

5.06 State equity petitions

State courts of general jurisdiction retain equity jurisdiction sufficient to entertain petitions for anticipatory relief, including against state and local authorities. In family-court and child-protection contexts, state equity may afford procedural openings unavailable in federal court. The state forum poses particular complications, however, when the court in which relief is sought is itself a part of the system whose conduct is challenged.

Part VI. Structural Foreclosure: Why Courts Will Defeat the Pathway

6.01 The analytical claim

The doctrinal availability of the pathway set out in Parts II through V does not, of itself, establish its effectiveness as a domestic remedy. The Committee against Torture and the Human Rights Committee have consistently held that effectiveness, for purposes of UNCAT Article 13 and ICCPR Article 2(3), is assessed in operation rather than in form. A remedy that exists on paper but is foreclosed in practice by accumulated doctrinal obstacles does not satisfy the treaty obligation.

This Part documents the principal doctrinal obstacles that a quia timet petition against threatened torture or CIDT would encounter in United States courts. It does so in candid form, treating each obstacle as it would actually be deployed in opposition by counsel for the United States or a state government. The IAJ does not, in this Part, argue that the obstacles are doctrinally indefensible; many of them rest on legitimate considerations of federalism, separation of powers, or institutional comity. The IAJ argues that the cumulative effect of the obstacles, in the contemporary procedural environment, is the structural foreclosure of the pathway for the category of cases that the framework would otherwise reach.

6.02 The threshold attack on the CIDT characterization

The doctrinal posture. A petitioner asserting that a domestic authority is about to inflict torture or CIDT must establish that the threatened conduct meets the severity threshold articulated in UNCAT Articles 1 and 16 and the jurisprudence of the Committee against Torture. The threshold is, by design, high. Severe physical or mental suffering is required; ordinary procedural inconvenience, unfavorable rulings, and routine administrative conduct do not meet it. Severity is supported in the strongest cases by clinical documentation prepared in accordance with the Istanbul Protocol.

> ***The pathway's failure.*** In contested litigation, the threshold attack is among the most effective obstacles for the government to deploy. Counsel for the United States or the state will argue that the petitioner is recharacterizing ordinary dissatisfaction with adverse rulings, accommodation denials, or institutional outcomes as international torture, and that adoption of this characterization would trivialize the prohibition. Where the petitioner is pro se, lacks clinical documentation, or is identifiable as a frequent litigant in the underlying matter, the threshold attack often succeeds at the pleading stage under Ashcroft v. Iqbal, 556 U.S. 662 (2009), and Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007). Conclusory invocations of "torture" or "CIDT" are precisely the formulaic recitations those cases reject. The Istanbul Protocol documentation that would defeat the threshold

attack is, in most cases involving threatened CIDT by domestic authorities, unavailable to the petitioner at the time anticipatory relief must be sought.

6.03 Younger abstention

The doctrinal posture. Federal courts presumptively abstain from interfering with ongoing state judicial proceedings under Younger v. Harris, 401 U.S. 37 (1971), and its progeny. The doctrine is narrow after Sprint Communications v. Jacobs, 571 U.S. 69 (2013), which confined Younger to three categories of state proceedings: state criminal prosecutions, certain civil enforcement proceedings, and civil proceedings involving orders uniquely in furtherance of state courts' judicial functions. The doctrine contains exceptions for bad faith, harassment, patent unconstitutionality, and circumstances in which the state forum cannot provide adequate opportunity to raise the federal claim.

The pathway's failure. For the substantial subset of cases in which the threatening conduct arises within ongoing state proceedings — family court, child-protection, disability rights, civil commitment, criminal court — Younger is the obstacle most likely to dispose of the petition. The Sprint narrowing has been applied unevenly by lower courts, and many continue to abstain on facts that would not, on a strict reading, fall within the three Sprint categories. The recognized exceptions, while doctrinally available, are demanding in practice. Bad-faith and patent-unconstitutionality findings require a level of judicial willingness to characterize a state forum as compromised that federal district judges are rarely prepared to undertake. The inadequate-opportunity exception requires the petitioner to demonstrate, on the record, that the state forum cannot reach the federal claim before the threatened act occurs — a demonstration few pro se petitioners are positioned to make and few represented petitioners can make on a timeline that matches anticipatory relief.

6.04 Rooker-Feldman

The doctrinal posture. Federal district courts lack jurisdiction to review state-court judgments under the Rooker-Feldman doctrine. The doctrine was narrowed by Exxon Mobil v. Saudi Basic Industries, 544 U.S. 280 (2005), to cases brought by state-court losers complaining of injuries caused by state-court judgments and inviting review and rejection of those judgments. Petitions for anticipatory relief framed as challenges to future conduct, rather than to prior judgments, are doctrinally distinguishable from Rooker-Feldman.

The pathway's failure. In practice, the distinction collapses where the impending act arises from or is authorized by a prior state-court order. Counsel for the government will frame the petition as a thinly disguised appeal of the underlying order, and many lower courts have credited this framing despite the Exxon Mobil narrowing. The doctrine's continuing vitality as a defensive instrument

outstrips its formal scope. Even where a petitioner specifically targets future conduct distinguishable from any prior order, the Rooker-Feldman argument adds delay, briefing burden, and additional risk of dismissal.

6.05 Judicial and quasi-judicial immunity

The doctrinal posture. Judges are absolutely immune for judicial acts under Stump v. Sparkman, 435 U.S. 349 (1978), and Mireles v. Waco, 502 U.S. 9 (1991), even where the acts are alleged to be malicious, corrupt, or in excess of jurisdiction. The 1996 Federal Courts Improvement Act amended 42 U.S.C. § 1983 to bar injunctive relief against judicial officers acting in judicial capacity unless a declaratory decree was violated or declaratory relief was unavailable. Quasi-judicial immunity extends analogous protection to prosecutors under Imbler v. Pachtman, 424 U.S. 409 (1976), and to guardians ad litem, court-appointed evaluators, and analogous officers.

The pathway's failure. Where the actor threatening torture or CIDT is a judge or quasi-judicial officer acting in their official function, the 1996 amendment to § 1983 forecloses injunctive relief absent the predicate conditions, which are not present in a pre-enforcement quia timet petition. Declaratory relief remains available but does not, of itself, prevent the threatened act; it shifts the doctrinal landscape only on noncompliance. The Forrester v. White, 484 U.S. 219 (1988), carve-out for administrative and ministerial acts is doctrinally available but narrow in practice; courts have construed the line between judicial and administrative conduct restrictively. For the substantial category of cases in which the threatening actor is a judicial or quasi-judicial officer acting within their assigned function, the immunity framework is the single largest doctrinal obstacle.

6.06 Sovereign immunity and the limits of Ex parte Young

The doctrinal posture. The Eleventh Amendment bars suits against states. Ex parte Young, 209 U.S. 123 (1908), permits suits against state officials in official capacity for prospective injunctive relief to prevent ongoing or threatened violations of federal law. Edelman v. Jordan, 415 U.S. 651 (1974), bars retrospective relief. Pennhurst State School v. Halderman, 465 U.S. 89 (1984), bars federal injunctive relief premised on state-law violations against state officials in official capacity. For federal officials, the Bivens framework has been substantially narrowed as noted in Part 5.02.

The pathway's failure. Sovereign immunity is, in this analysis, less foreclosing than other obstacles, because Ex parte Young is broadly available for prospective relief against threatened federal-law violations and Tennessee v. Lane, 541 U.S. 509 (2004), abrogates state immunity for ADA Title II claims involving fundamental rights. The obstacle nonetheless adds litigation burden: counsel must navigate the Pennhurst limitation carefully (avoiding state-law theories as the basis for federal relief against state officials), the Edelman limitation (ensuring all relief sought is prospective), and the

Ziglar limitation on Bivens for federal defendants. The doctrinal complexity exceeds what most pro se petitioners can manage and what most represented petitioners can develop on a timeline matching anticipatory relief.

6.07 Standing, ripeness, and the Lyons problem

The doctrinal posture. Under City of Los Angeles v. Lyons, 461 U.S. 95 (1983), a petitioner seeking prospective injunctive relief must demonstrate a real and immediate threat of future injury. Past harm coupled with speculative future repetition does not suffice. Susan B. Anthony List v. Driehaus, 573 U.S. 149 (2014), and the pre-enforcement-challenge line provide that a credible threat of imminent enforcement of conduct that would constitute the violation suffices for standing.

The pathway's failure. Lyons is among the most reliable obstacles for the government to deploy against a quia timet petition. Where the petitioner has identified a specific impending act with date, actor, and mechanism, Susan B. Anthony List supplies the answer. Where the petitioner has identified general practices or anticipated future episodes whose specifics depend on intervening discretionary decisions by officials, Lyons forecloses standing. The line between the two is doctrinally clear and operationally indeterminate; lower courts have applied it inconsistently. For petitions in the difficult middle ground — where the petitioner reasonably anticipates harm but cannot point to a dated, scheduled, particularized impending act — Lyons disposes of the case.

6.08 Non-self-execution and the limits of international authority

The doctrinal posture. Under Medellín v. Texas, non-self-executing treaty provisions do not create private rights of action in United States courts. The Senate's reservations, understandings, and declarations to UNCAT and the ICCPR confirm non-self-execution. Sosa v. Alvarez-Machain and Jesner v. Arab Bank, 138 S. Ct. 1386 (2018), constrain the Alien Tort Statute. The role of the international framework is, as set out in Part 3.04, interpretive, constitutional-content-supplying, and customary-international-law-supplying, not directly causes-of-action-creating.

The pathway's failure. The non-self-execution doctrine is not, properly understood, an obstacle to the pathway as set out in this Opinion. The pathway does not predicate a cause of action on treaty provisions. It uses the international framework interpretively. In practice, however, opposing counsel routinely characterize any reliance on UNCAT, the ICCPR, or the Committee against Torture's General Comments as an attempted treaty-based cause of action, and courts often credit this characterization. The doctrinal sophistication required to defend the interpretive use of the international framework against the simpler characterization is substantial. Where the petitioner is pro se or where the briefing is inadequate, the Medellín objection often succeeds notwithstanding its formal inapplicability.

6.09 The adequate-alternative-remedies argument

The doctrinal posture. Anticipatory equitable relief is unavailable where the legal remedy is adequate or where alternative procedures can prevent the threatened harm. Patsy v. Board of Regents, 457 U.S. 496 (1982), establishes that there is no general administrative exhaustion requirement under § 1983, but case-specific inadequacy must still be established. Available alternatives include appellate review, judicial misconduct complaints under the Judicial Conduct and Disability Act, administrative grievance procedures, ADA Title II grievance mechanisms, recusal motions, motions for stay, and damages actions.

> ***The pathway's failure.*** This obstacle is structurally significant because the government can list, against virtually any petition, a substantial catalogue of theoretically available alternatives. Theoretical availability is not adequacy, and the petitioner can in principle establish case-specific inadequacy on the record. In practice, the petitioner must have actually invoked the alternatives, documented the invocation, and documented the result. Pre-enforcement petitioners often have not done so; the alternatives have not been tried because the threatened act has not yet occurred and the petitioner is acting on anticipation. The result is a doctrinal trap: the petitioner who has not yet invoked alternatives is told to invoke them; the petitioner who waits to invoke them loses the timeline; the petitioner who invokes them while seeking anticipatory relief is told to wait for their outcome. The structural effect is to channel petitioners toward post-deprivation rather than anticipatory remedies — which is the opposite of what UNCAT Article 2(1) requires.

6.10 Vexatious-litigant designations and the institutional reception of repeat filers

The doctrinal posture. Federal and state courts retain authority to designate litigants vexatious and to require pre-filing review of subsequent submissions. The standard for designation is stringent, requiring a substantial pattern of frivolous or harassing filings. A single petition supported by clinical documentation and authoritative legal sources is not frivolous on its face.

> ***The pathway's failure.*** This obstacle operates not at the formal doctrinal level but at the institutional-reception level. The category of cases most likely to be brought under the quia timet framework — pro se petitioners in family-court, child-welfare, or disability-accommodation contexts where institutional conduct has caused documented psychological harm — substantially overlaps the category of petitioners who, by the time they reach the framework, have a history of prior unsuccessful filings in the underlying matter. The institutional reception of such petitioners is poor. Courts that would not formally designate the litigant vexatious nonetheless treat the petition with the skepticism reserved for repeat filers. The petition's substantive merits are often not reached. This is not a doctrine of the law but an operational feature of the courts in which the pathway would be invoked, and it is among the most consequential obstacles in practice.

A further reception dimension. Beyond the repeat-filer dimension, a distinct reception obstacle attends petitions framed in international-human-rights terms by petitioners proceeding pro se. United States federal courts, in their day-to-day operation, are not the principal forum in which the United States' obligations under UNCAT and ICCPR are adjudicated; that work occurs primarily before the treaty bodies and Special Procedures of the United Nations and in scholarly and civil-society analysis. A pro se petitioner who invokes UNCAT Article 2(1), ICCPR Article 7, jus cogens, and the Charming Betsy canon in a quia timet pleading frequently encounters judicial reception calibrated to the conventional § 1983 / Bivens / habeas vocabulary of domestic constitutional litigation rather than to the international vocabulary in which the petitioner has framed the claim. This reception gap is not formal doctrine and is not captured by the doctrinal obstacles documented above. It is a cultural and institutional feature of contemporary federal practice. The IAJ identifies it because its operational effect on the pathway is substantial and because the documentary record of structural foreclosure would be incomplete without it.

6.11 Federalism and the domestic-relations exception

The doctrinal posture. O'Shea v. Littleton, 414 U.S. 488 (1974), rejected sweeping injunctive supervision of state judicial administration. Pennzoil v. Texaco, 481 U.S. 1 (1987), reaffirmed the federal interest in non-interference with state proceedings. The domestic-relations exception, as articulated in Ankenbrandt v. Richards, 504 U.S. 689 (1992), and clarified in Marshall v. Marshall, 547 U.S. 293 (2006), is narrow — it bars federal courts from issuing divorce, alimony, and child-custody decrees but does not foreclose adjudication of constitutional and statutory claims arising in domestic-relations contexts.

The pathway's failure. Where the threatened conduct arises in family-court or domestic-relations contexts — a substantial fraction of cases in which the framework would be invoked — federalism considerations operate cumulatively with Younger to defeat the petition. The narrow scope of the formal domestic-relations exception does not constrain courts' substantive disposition to deny federal intervention in matters they characterize as domestic relations. The O'Shea concern about supervisory injunctions does not technically apply to narrow targeted relief, but the institutional unwillingness to enter such relief in domestic-relations contexts substantially exceeds the formal doctrinal foreclosure.

6.12 Federal equitable power and the Grupo Mexicano limit

The doctrinal posture. Beyond the abstention, immunity, standing, and case-management doctrines documented above, any federal-court extension of equitable doctrine encounters a distinct limit on the source of federal equity power itself. In Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc., 527 U.S. 308 (1999), the Supreme Court held that the equity jurisdiction of the federal courts is limited

to remedies that were traditionally accorded by courts of equity, primarily those available in the English Court of Chancery at the time of the Judiciary Act of 1789, absent statutory authorization to expand that scope. Justice Scalia's majority opinion rejected a Mareva-style asset-freezing injunction on the ground that the requested remedy did not fit within the traditional equitable practice the Judiciary Act incorporated. The case has since served as the central modern authority on the limits of federal courts' inherent equity power.

The pathway's failure, and the answer. Counsel for the government will deploy Grupo Mexicano against a quia timet petition as foreclosing any extension of federal equity to a context — threatened torture and CIDT by domestic authorities — for which the petitioner cannot identify direct 1789-era chancery precedent. The argument is doctrinally serious and substantively dispositive on most plausible deployments, particularly because the recognized federal cases applying quia timet documented in Appendix B arise in suretyship and analogous commercial-equity contexts, not in the protection of bodily and mental integrity from threatened official conduct. The IAJ's response to this obstacle, as developed in Part IV, is that the doctrine being extended is itself traditional: bills quia timet were entertained in the English Court of Chancery at and before the time of the Judiciary Act of 1789, and they have been continuously received in federal equity practice since. Grupo Mexicano forecloses the creation of equitable remedies untethered to traditional equity; it does not foreclose application of a traditional equitable doctrine to a protected interest for which it has not previously been deployed. The petitioner's burden is to show that the requested relief is properly characterized as preventive equitable relief within the traditional doctrine of quia timet, not as an invention of a new equitable remedy. This burden is real, and counsel for the government will resist this characterization at every stage. The Grupo Mexicano obstacle is therefore neither absolute nor easily overcome; it is a substantial limit that the petitioner must meet on the doctrinal-extension argument's own terms.

6.13 Cumulative effect

The obstacles documented above do not operate in isolation. A typical motion to dismiss in opposition to a quia timet petition will deploy several simultaneously. Younger abstention combined with the CIDT threshold attack combined with the alternative-remedies argument is sufficient, on most fact patterns the framework would reach, to dispose of the petition at the pleading stage. Where the threatening actor is judicial, the 1996 § 1983 amendment combined with absolute judicial immunity combined with Rooker-Feldman compounds the foreclosure. The petitioner must prevail against every obstacle deployed; the government must prevail on any one of them. The asymmetry is, in the cases the framework is most directly addressed to, structurally dispositive.

6.14 Conclusion of Part VI

Quia timet, as a doctrinal pathway for the prevention of threatened torture and CIDT by domestic authorities of the United States, is theoretically available but structurally foreclosed in the cases the framework most directly addresses. The doctrinal availability is real and may, in unusual case profiles, support relief. The structural foreclosure is also real and disposes of the substantial majority of cases. The two findings are compatible; both must be stated for the analysis to be complete.

Part VII. Cases That May Survive

The structural foreclosure documented in Part VI is general but not absolute. A small subset of case profiles may survive the obstacle structure and support invocation of the pathway. The IAJ identifies these profiles not to encourage filing in any particular case but to delimit the analytical conclusion: foreclosure is general; survival is possible in narrowly defined circumstances; counsel and complainants should assess their cases against the criteria below before considering whether the pathway is worth attempting.

7.01 The strongest case profile

- The threatening actor is non-judicial: executive, administrative, custodial, agency, or law-enforcement personnel. Judicial immunity and the 1996 § 1983 amendment are not implicated. Younger and Rooker-Feldman are reduced in salience.
- The impending act is concrete, dated, and reasonably certain. Lyons-type standing concerns are met. Susan B. Anthony List supplies the doctrinal answer.
- Severity is supported by Istanbul Protocol clinical documentation prepared by a qualified practitioner. The CIDT threshold attack is met on the documentary record rather than left to pleading inference.
- The petitioner has previously invoked at least one available alternative remedy — administrative grievance, accommodation request, recusal motion — and documented the denial. The alternative-remedies argument is met by the case-specific record.
- The requested relief is narrow, time-bounded, and targeted at the specific impending act. O'Shea and federalism concerns are minimized.
- The petitioner can plead corresponding violations of domestic constitutional and statutory law — Eighth Amendment, Due Process, ADA Title II, Section 504 — so the international framework provides interpretive support rather than load-bearing authority. Non-self-execution objections are foreclosed.

7.02 Intermediate and weaker profiles

Cases that meet some but not all of the strongest-profile criteria may survive in jurisdictions whose interpretation of the relevant doctrines is more favorable to anticipatory relief. The variability across circuits is substantial. Where the petitioner can meet most but not all criteria, the analysis becomes

circuit-specific and fact-specific in ways this Advisory Opinion cannot generalize. Where the petitioner meets few of the criteria, the framework is unlikely to produce relief and may produce adverse consequences including cost awards and vexatious-litigant designations.

7.03 Cases the framework is unlikely to help

Petitioners seeking structural injunctive relief against an entire court system or against judges as a class — implicating O'Shea, Pulliam, and the 1996 amendment simultaneously — are unlikely to obtain relief. Petitioners with substantial prior litigation history face heightened institutional-reception risk. Prior filings do not make a petition legally invalid, but they may affect how courts receive the petition, especially where the new filing does not present materially new facts, clinical documentation, a concrete imminent act, or narrower relief. Petitioners whose claimed severity is contested on the face of the record, or who lack clinical documentation, will not survive the threshold attack. For these categories, the pathway is foreclosed and other approaches — direct international engagement, narrower targeted state-court litigation, civil-rights counsel involvement under conventional § 1983 or ADA Title II frameworks without the CIDT framing — are likely to serve the petitioner better.

Part VIII. Conclusions of the IAJ

Epistemic status of the conclusions. The conclusions that follow are IAJ institutional positions drawn from doctrinal analysis, documentary review, and the structural-foreclosure assessment set out above. They are not findings by a court, treaty body, or governmental authority. They distinguish among settled domestic law, proposed doctrinal extension, likely domestic procedural resistance, and the IAJ's assessment of effective-remedy adequacy under international human-rights standards. The General Comment on IAJ Advisory Opinions, incorporated by reference, governs the institutional weight of the conclusions below.

8.01 The doctrinal conclusion

The equitable doctrine of quia timet is, as a matter of proposed doctrinal extension supported by equity's preventive logic and by the peremptory character of the prohibition on torture and CIDT, capable of being invoked as a putative pathway against threatened torture or CIDT by domestic authorities of the United States. The extension is supported by the doctrine's subject-matter neutrality, by the preventive logic that has always defined it, by the United States' obligations under UNCAT Article 2(1) and cognate instruments, and by the Charming Betsy canon's requirement of conforming interpretation. The pathway is not novel in any way that compromises its doctrinal coherence; it is the application of an established preventive-equity doctrine to a category of cases the doctrine's own logic encompasses.

8.02 The structural conclusion

The pathway's doctrinal availability is, in the contemporary procedural environment of United States courts, defeated in practice for the substantial majority of cases the framework addresses. The cumulative operation of Younger abstention, Rooker-Feldman, judicial and quasi-judicial immunity, the 1996 amendment to 42 U.S.C. § 1983, Lyons-type standing constraints, Iqbal-Twombly pleading review, the adequate-alternatives doctrine, and institutional-reception factors that fall outside formal doctrine, produces structural foreclosure. A small subset of case profiles — those in which the threatening actor is non-judicial, the impending act is dated and documented, severity is clinically established, alternative remedies have been invoked and denied on the record, relief sought is narrow, and corresponding domestic claims are available — may survive. The substantial majority will not.

8.03 The treaty-compliance conclusion

Under UNCAT Article 13 and ICCPR Article 2(3), as interpreted by the Committee against Torture and the Human Rights Committee, an effective domestic remedy must be available in practice and not merely in form. The IAJ's institutional position, advanced as a position and not as a finding of fact by any adjudicative body, is that the quia timet pathway as currently configured in United States courts does not constitute an effective domestic remedy for threatened torture or CIDT for the substantial majority of cases. The pathway exists in doctrinal form. It is foreclosed in operation. The condition is comparable to the conditions assessed by treaty bodies and regional human-rights tribunals in their effectiveness jurisprudence concerning other states. The IAJ submits this position for consideration in the competent treaty-body and Special Procedures fora to which the United States is accountable.

8.04 What follows from these conclusions

Several implications follow that the IAJ articulates, again as institutional position rather than legal finding.

- For courts: the analysis suggests that the cumulative effect of presently-applied doctrines forecloses a preventive pathway that equity's own logic and the United States' international obligations would otherwise support. Where individual judges have discretion under the relevant doctrines — particularly with respect to Younger's narrow Sprint categories, the Forrester carve-out from judicial immunity, and the interpretation of "adequate alternative remedy" on a case-specific record — judicial decisions favoring narrow application of the foreclosing doctrines would, on the IAJ's analysis, restore an avenue the international framework anticipates.
- For counsel: the analysis supports filing only in the strongest case profiles set out in Part VII. Filing outside those profiles is likely to result in adverse outcomes including dismissal, cost awards, and vexatious-litigant exposure. The framework does not support indiscriminate use.
- For complainants: the analysis does not support a general expectation that filing a quia timet petition will prevent the threatened conduct. For most complainants, particularly those in the case-profile categories that the framework is unlikely to help (Part 7.03), other paths — direct international engagement, narrower targeted litigation under conventional civil-rights frameworks, IAJ-mediated documentation — are likely to be more useful.
- For treaty bodies and Special Procedures: the analysis documents that the United States' presently-configured domestic-remedy framework does not, for threatened torture and CIDT, satisfy the preventive obligation of UNCAT Article 2(1) or the effective-remedy obligation of UNCAT Article 13 and ICCPR Article 2(3). The IAJ submits this documentation for use in periodic review, Concluding Observations, and the ongoing assessment of U.S. compliance.

- For the broader human-rights community: the foreclosure documented here is one instance of a broader pattern across putative domestic remedies in the United States. The IAJ anticipates examining additional pathways in subsequent advisory opinions and welcomes engagement with other civil-society bodies, academic institutions, and treaty-body stakeholders working in this space.

8.05 Closing

This Advisory Opinion does not promise relief to any complainant. It does not represent that quia timet, properly invoked, will succeed in preventing threatened torture or CIDT in any particular case. It is the IAJ's reasoned institutional analysis of a putative domestic pathway, its doctrinal foundation, its procedural vehicles, and the structural obstacles that defeat its operation in the substantial majority of cases the framework addresses. Its institutional weight is governed by the General Comment on IAJ Advisory Opinions, incorporated by reference. Its substantive analysis is offered for the use of those to whom it is addressed.

8.06 Documentation and reporting

The structural-foreclosure analysis set out in Part VI and the treaty-compliance conclusion in Part 8.03 depend, for their continuing institutional force, on documented evidence of how courts in fact respond to invocations of the framework. **The IAJ invites any complainant, counsel, or supporting party who invokes the analysis of this Advisory Opinion in any court of the United States to share, with the IAJ, the record of the proceeding for the purpose of cumulative documentation.** The IAJ welcomes:

- the filing or its substance, in such form as the participant chooses to share;
- the procedural disposition, including any order entered;
- the reasoning of the court, where the court has explained the disposition;
- the participant's own description of the proceeding and its effect.

Sharing is voluntary. Participants control what they share. The IAJ respects requests for confidentiality, pseudonymization, and limited use, and will not disclose identifying information without the participant's consent. Materials shared in confidence may be aggregated by the IAJ in anonymized form for inclusion in Shadow Reports to United Nations treaty bodies, in submissions to Special Procedures, and in subsequent IAJ advisory opinions analyzing the cumulative record of attempted exhaustion of this and other putative domestic remedies.

The IAJ does not, by extending this invitation, undertake to advise any participant on the conduct of any proceeding, to represent any participant in any forum, or to enter an attorney-client relationship with any participant. The General Comment on IAJ Advisory Opinions, incorporated by reference, governs.

Submitters are encouraged, where feasible, to register an account on the IAJ website (https://iaj.institute/) and submit the documents in conjunction either with a complaint, or as a third-party violation report. The admin@iaj.institute email address remains available for those for whom website registration is not feasible.

Appendix A. Illustrative Pleading Forms

The following pleading forms are illustrative, not prescriptive. They are included as references for counsel evaluating the pathway and for treaty bodies assessing what attempted invocation of the pathway would have required. The IAJ does not represent that filings following these forms will succeed in any court. The General Comment incorporated by reference governs the institutional weight of these illustrations.

A.1 Illustrative caption and introduction

IN THE [COURT]

[DISTRICT / DIVISION / VENUE]

[PETITIONER], Petitioner,

v.

[RESPONDENT(S)], in their official capacities, Respondents.

Case No. [_____]

VERIFIED PETITION FOR ANTICIPATORY EQUITABLE RELIEF

PURSUANT TO THE DOCTRINE OF QUIA TIMET

Introduction

1. This is a petition for anticipatory equitable relief, brought pursuant to the doctrine of quia timet and Federal Rule of Civil Procedure 65 [or applicable state rule], to prevent an imminent act or omission that Petitioner alleges, on the documented record, would constitute cruel, inhuman or degrading treatment [and/or torture], or would create a credible risk of such prohibited treatment. Petitioner seeks no damages in this proceeding.

2. The domestic claims in this petition arise under the Eighth and Fourteenth Amendments, Title II of the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and other applicable domestic law. The international prohibition on torture and cruel, inhuman or degrading treatment, including the

United Nations Convention against Torture, the International Covenant on Civil and Political Rights, and customary-international-law materials recognized in The Paquete Habana, 175 U.S. 677 (1900), and the Filartiga line, informs the interpretation of severity, irreparable harm, official notice, public interest, and the need for preventive relief. Petitioner does not rely on non-self-executing treaty provisions as a freestanding private cause of action.

A.2 Illustrative factual core

3. [Specific impending act identified by actor, mechanism, date, and location.]

4. [Severity allegations, supported by reference to Istanbul Protocol documentation attached as Exhibit [_].]

5. [Prior efforts to invoke alternative remedies, with dates, denials, and the reasons each cannot prevent the impending act on the timeline.]

6. [Specific request for narrow, time-bounded relief targeted to the impending act.]

A.3 Illustrative grounds and prayer

7. Petitioner has a substantive right not to be subjected to the threatened conduct under the federal constitutional and statutory provisions cited above. The threat is real and imminent, as alleged in paragraphs 3 through 5. The threatened injury is irreparable because, once inflicted, the identified harm cannot be adequately remedied by damages, appeal, post-hoc complaint, or later review. The peremptory and non-derogable character of the prohibition supplies additional interpretive support for the need for preventive relief, but the request rests on the case-specific showing of imminent, severe, and inadequately remediable harm. Alternative remedies are inadequate for the reasons set forth in paragraph 5. The balance of equities and the public interest favor anticipatory relief.

WHEREFORE, Petitioner respectfully requests that this Court:

A. Enjoin Respondents from [specific impending act] pending further order of this Court;

B. Declare, pursuant to 28 U.S.C. § 2201, that the threatened conduct would violate the constitutional and statutory provisions cited above; and

C. Grant such further relief as the Court deems just and proper.

Counsel adapting this illustration to a specific case should consult Part VI of this Advisory Opinion for the principal obstacles the petition will encounter and Part VII for the criteria distinguishing case profiles that

may survive from those that will not. The strongest profile (Part 7.01) is the only case profile in which this Opinion supports anticipating that relief may, in some circuit and on some record, be obtained.

Appendix B. Authorities Cited

Federal cases recognizing and applying the doctrine of quia timet

- City of New Orleans v. Whitney, 138 U.S. 595 (1891) (recognizing that equity may prevent injury before actual injury by a bill sometimes called quia timet, including a surety's bill to compel the debtor).
- Buskirk v. King, 72 F. 22 (4th Cir. 1896) (analogizing preventive injunctions to bills quia timet and describing such relief as precautionary justice to prevent irreparable injury).
- Am. Sur. Co. of N.Y. v. Lewis State Bank, 58 F.2d 559 (5th Cir. 1932) (discussing equitable remedies available to sureties, including exoneration/quia timet and subrogation).
- Morley Constr. Co. v. Md. Cas. Co., 90 F.2d 976 (8th Cir. 1937) (defining quia timet as preventive equity for future probable injury and treating surety exoneration relief as in the nature of quia timet).
- Milwaukie Constr. Co. v. Glens Falls Ins. Co., 367 F.2d 964 (9th Cir. 1966) (recognizing surety's right to specific performance and collateral security against anticipated loss).
- Fireman's Fund Ins. Co. v. S.E.K. Constr. Co., 436 F.2d 1345 (10th Cir. 1971) (recognizing equitable surety exoneration/quia timet principles but denying relief on the facts).
- Am. Motorists Ins. Co. v. United Furnace Co., 876 F.2d 293 (2d Cir. 1989) (recognizing surety's equitable claim for specific performance of collateral-security obligation before final liability determination; anticipatory relief in the quia timet line).
- Borey v. Nat'l Union Fire Ins. Co. of Pittsburgh, Pa., 934 F.2d 30 (2d Cir. 1991) (defining quia timet in surety context, distinguishing exoneration, and denying preliminary relief absent irreparable harm; canonical modern federal articulation).
- In re Farmland Indus., Inc., 296 B.R. 793 (B.A.P. 8th Cir. 2003) (stating common elements of exoneration and quia timet in surety context).
- U.S. Fid. & Guar. Co. v. Arch Ins. Co., 578 F.3d 45 (1st Cir. 2009) (describing quia timet and exoneration as time-honored equitable surety remedies).

- Fid. & Deposit Co. of Md. v. Edward E. Gillen Co., 926 F.3d 318 (7th Cir. 2019) (recognizing modern viability of quia timet but rejecting surety's effort to augment settled contractual remedies).

Constitutional, statutory, and treaty provisions

- U.S. Const. amends. V, VIII, XIV.
- 28 U.S.C. § 1651 (All Writs Act).
- 28 U.S.C. § 2201 (Declaratory Judgment Act).
- 28 U.S.C. §§ 2241, 2254, 2255 (habeas corpus).
- 42 U.S.C. § 1983 (as amended by Federal Courts Improvement Act of 1996).
- Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131 et seq.
- Section 504 of the Rehabilitation Act, 29 U.S.C. § 794.
- Federal Rule of Civil Procedure 65.
- Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Articles 1, 2, 13, 16.
- International Covenant on Civil and Political Rights, Articles 2, 7.

Cases

- Ankenbrandt v. Richards, 504 U.S. 689 (1992).
- Ashcroft v. Iqbal, 556 U.S. 662 (2009).
- Atkins v. Virginia, 536 U.S. 304 (2002).
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007).
- Bivens v. Six Unknown Named Agents, 403 U.S. 388 (1971).
- City of Los Angeles v. Lyons, 461 U.S. 95 (1983).
- D.C. Court of Appeals v. Feldman, 460 U.S. 462 (1983).
- Edelman v. Jordan, 415 U.S. 651 (1974).
- Egbert v. Boule, 596 U.S. 482 (2022).
- Ex parte Young, 209 U.S. 123 (1908).
- Exxon Mobil v. Saudi Basic Industries, 544 U.S. 280 (2005).

- Filartiga v. Pena-Irala, 630 F.2d 876 (2d Cir. 1980).
- Forrester v. White, 484 U.S. 219 (1988).
- Gibson v. Berryhill, 411 U.S. 564 (1973).
- Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc., 527 U.S. 308 (1999) (limiting federal courts' equitable authority to remedies traditionally accorded by courts of equity at the time of the Judiciary Act of 1789, absent statutory authorization).
- Imbler v. Pachtman, 424 U.S. 409 (1976).
- Jesner v. Arab Bank, 138 S. Ct. 1386 (2018).
- Kugler v. Helfant, 421 U.S. 117 (1975).
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